



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/811,372 Confirmation No. 2082
Applicant : George T. Domizio
Filed : March 26, 2004
TC/A.U. : 3677
Examiner : David C. Reese

Docket No. : 03-284-2
Customer No. : 34704

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

Appeal Brief

Dear Sir:

This brief is submitted in support of the Notice of Appeal which was filed on March 24, 2006. A request for four (4) month extension of time accompanies this brief and extends the period for reply to and including September 24, 2006.

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(i) **Real party in interest** - The real party in interest in this matter is the applicant, George Domizio.

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(ii) Related appeals and interferences - There are no known related appeals or interferences.

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(iii) Status of claims - The application contains claims 1-15.
Claims 1-11 and 13-15 stand rejected, and claim 12 has been
withdrawn from consideration.

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(iv) **Status of amendments** - There were no amendments after the final rejection, and thus there are no non-entered amendments. The claims are pending as listed in the following claims appendix.

(v) Summary of the claimed subject matter - Independent claim 1 is the sole independent claim on appeal. Claim 12 is also an independent claim, but has been withdrawn from consideration.

Claim 1 calls for a toggle bolt 10 for securing a threaded member 12 relative to a mold wall 26. These components are illustrated in Figures 1-3 and discussed throughout the specification. The toggle bolt is used for holding a threaded member in place during molding of a cast article in a mold (see specification paragraph [0017]). Figure 1 shows toggle bolt 10 threaded into threaded member 12. The assembly of bolt 10 and threaded member 12 are positioned through an opening 24 in the wall 26 of a mold for forming a cast member, for example a poured concrete structure (see specification paragraph [0023]).

The toggle bolt 10 has a head portion 16 having a central portion, a rounded end 20 extending from one end of the central portion and at least one wing 22 flexibly extending laterally with respect to a longitudinal axis of the central portion. This structure is described in the specification in numerous places, one example of which is paragraph [0022]. This structure is also clearly illustrated in Figures 1-3 and Figures 2-3 show how the structure is used to secure the assembly to wall 26.

The thread protector 14 comprises a threaded member having a slotted head (see specification paragraph [0021]). This structure is illustrated in Figures 1-3, and a slotted face 18 is illustrated in Figures 5 and 7 as well. The thread protector 14 is releasably connected to the central portion of the head portion 16.

The releasable connection is accomplished by forming the connection between head portion 10 and thread protector portion

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14 with a breaking point therebetween. The specification discusses the removal of head portion 10 relative to thread protector portion 14 in numerous places, including paragraph [0020], paragraph [0023], paragraph [0024] and others.

(vi) Grounds of rejection to be reviewed on appeal -

First Ground - Whether Claims 1-3 and 6-8 are unpatentable over US 6,789,776 to Gavin (hereafter Gavin) in view of US 5,551,817 to Kanie (hereafter Kanie).

Second Ground - Whether claim 4 is unpatentable over Gavin in view of Kanie and US 6,406,236 to Olson, Jr. (hereafter Olson, Jr.).

Third Ground - Whether claim 5 is unpatentable over Gavin in view of Kanie and US 6,679,712 to Chang (hereafter Chang).

Fourth Ground - Whether claims 9-11 are unpatentable over Gavin in view of Kanie and US 5,667,443 to Allen (hereafter Allen).

Fifth Ground - Whether claims 13-15 are unpatentable over Gavin in view of Kanie and US 4,715,185 to Angellotti (hereafter Angellotti).

(vii) Argument

First Ground - Claims 1-3

Claim 1 is as set forth in the claims appendix. The Examiner has rejected this claim asserting that Gavin in light of Kanie renders the claim obvious.

It is asserted that this rejection is in error because Kanie is from non-analogous art and is not reasonably pertinent to the particular problem with which the inventor was involved, and further because Gavin contains teachings which teach against the modification.

The Examiner concedes that Gavin fails to teach the "resilient section at the forefront of the annular member". Translating this to the language of claim 1, Gavin certainly does not disclose the "at least one wing flexibly extending laterally with respect to a longitudinal axis of the central portion", as is required by claim 1, lines 4-6. Instead, Gavin teaches that the head is a smooth pin. Furthermore, a stated objective of Gavin is to provide the pin such that it is easily removed from the mold wall after molding is complete. (See Gavin, col 1, line 33-35, col 1, lines 48-51, for example).

Against this teaching, the Examiner modifies Gavin to include teaching from Kanie, which is from a very different field of technology having nothing to do with the subject matter of the claims of the application.

The present claims and also the Gavin reference are drawn to the very specific field of temporarily securing articles relative to mold walls for forming concrete molded structures containing the articles. Kanie is drawn to a fastener for

holding panel walls together, and makes no mention of any applicability to the field of endeavor of the present invention.

It is respectfully submitted that a person of ordinary skill in the art would not consult such technology for teachings in the specific field of the present invention.

The Examiner correctly cites *In re Wood* as setting forth the test off non-analogous art. Where, as here, the reference is not within the field of the inventor's endeavor, one must consider whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. The problem with which the present inventor was involved at the time the invention was made was temporarily positioning a threaded insert relative to the wall of a mold for poured concrete articles. This is also apparently the problem with which Gavin was involved. Kanie, on the other hand, deals with permanently assembling wall structures to each other. There is no reasonable relationship between the teachings of Kanie and the problem with which the present inventor was presented. Thus, under *In re Wood*, Kanie is not properly applied against the claims of the present application.

Further, there would be no suitable motivation for a person skilled in the art to make such a modification of Gavin, particularly in the face of the clear teaching in Gavin, referenced above, which teaches away from such a modification. Modifying Gavin to include a wing structure would cut against the stated objective in Gavin of making the remains of the stud (head portion) easily removable from the mold wall after molding is complete.

Based upon the foregoing, the rejection of claim 1 as obvious over Gavin in view of Kanie is in error and should be

reversed. Claims 2, 3, 6 and 7 stand or fall together with claim 1.

First ground - Claim 8

Dependent claim 8 further calls for the at least one wing to have a forward facing portion 54 extending forward from a hinge connection 52 and a rearward facing portion 50 extending rearwardly from the hinge connection. This is clearly shown in Figure 6. As shown in the drawing, the forward extending portions are spaced from each other to allow the tip of the insert to contract during insertion into a hole in the mold wall. The Examiner had relied upon Kanie as teaching this structure as claimed in original claim 8. It is submitted that the solid rounded front of the Kanie device is clearly not the structure which is set forth in claim 8, and reconsideration of the interpretation of Kanie used by the Examiner is earnestly solicited. Kanie clearly has no structure extending forwardly from the hinge connection, but rather shows a solid rounded tip with rearwardly extending flaps.

Second ground - Claim 4

Claim 4 calls for the at least one wing to have an outer surface and ridges on the outer surface. The Examiner has drawn the ridges from a third reference, Olson, Jr. Olson, Jr. is from a field of endeavor similar to that of Kanie, and is not analogous art. The use of Olson, Jr., to teach the subject matter of the instant claims is not proper. Olson is drawn to a panel fastener, and has no stated applicability to the field of endeavor of the present claims.

Further, modification of the Gavin teaching to include the ridges of Olson would also cut against the teaching of Gavin as mentioned above, since such ridges hardly help in ease of removal of the stud portion or head portion from the mold wall.

Thus, the rejection of claim 4 is in error and should be reversed.

Third ground - Claim 5

Claim 5 calls for the slot 56 of the present invention as shown in Figure 6, and was rejected using Gavin and Kanie and also Chang. Chang is from a very different field, specifically, a fixture for an electrical device. A person of skill in the art to which the present invention pertains would not consult teachings in the diverse field of Chang. Further, there does not appear to be any suitable motivation for this modification to Gavin, which has no structure which requires the flexibility provided by the slot.

Thus, the rejection of claim 5 as obvious over Gavin, Kanie and Chang is in error and should be reversed.

Fourth ground - Claims 9-11

Claims 9-11 recite the subject matter of the longitudinal cutout 58 which is illustrated in Figures 6 and 7. The Examiner relied upon Allen for teaching this subject matter, and combined it with Gavin and Kanie as discussed above. It is of course agreed that Allen generally teaches a cutout structure on a threaded device for cleaning the threads of an article with which the article of Allen is to be engaged. It is submitted, however, that the device of Allen is also outside the field of

endeavor of the inventor. Of course, these claims are also supported by the arguments in the First Ground discussed above.

Fifth ground - Claims 13-15

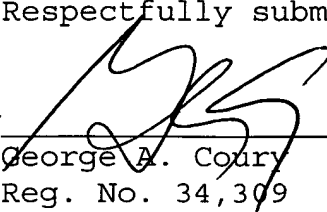
Claims 13-15 add more detail to claim 1 regarding the at least one wing. The Examiner has added Angellotti to the combination of Gavin and Kanie in order to reject these claims, stating that Angellotti shows the spaced forward extending members called for by these claims.

Angellotti suffers from the same issues as Kanie as applied in this rejection, specifically, it is from non-analogous art and modification of Gavin to incorporate the features of Angellotti goes against the teaching in Gavin of a smooth walled structure which is easy to remove from the mold wall. Thus, the rejection of claims 13-15 is in error and should be reversed.

Please charge the small entity fee of \$250 for filing this appeal brief to Deposit Account 02-0184. It is believed that no additional fee is due in connection with this paper. If, however, any fee is due, please charge same to Deposit Account No. 02-0184.

Respectfully submitted,

By


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Date: September 22, 2006

I, George A. Coury, hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313 on September 22, 2006


George A. Coury

(viii) **Claims appendix** The following are the claims involved in the appeal. Since claim 12 is currently withdrawn from consideration, it is not preprinted herein.

1. A toggle bolt for securing a threaded member relative to a mold wall, comprising:

a head portion having a central portion, a rounded end extending from one end of the central portion and at least one wing flexibly extending laterally with respect to a longitudinal axis of the central portion; and

a thread protector portion comprising a threaded member having a slotted head, the thread protector being releasably connected to the central portion.

2. The apparatus of claim 1, wherein the central portion has a solid base at an end opposite to the rounded end, and wherein the slotted head of the thread protector is releasably connected to the solid base.

3. The apparatus of claim 1, wherein the at least one wing comprises at least two wings extending laterally from opposite sides of the central portion.

4. The apparatus of claim 1, wherein the at least one wing has an outer surface, and ridges on the outer surface.

5. The apparatus of claim 1, further comprising a longitudinal slot disposed along the central portion.

6. The apparatus of claim 1, wherein the at least one wing extends outwardly and rearwardly from the rounded head.

7. The apparatus of claim 1, wherein the at least one wing is hingedly mounted to the central portion at a hinged connection.

8. The apparatus of claim 7, wherein a forward facing portion of the at least one wing extends forward from the hinge connection, and a rearward facing portion of the at least one wing extends rearwardly from the hinge connection.

9. The apparatus of claim 1, further comprising at least one longitudinal cutout positioned along the thread protector.

10. The apparatus of claim 9, wherein the at least one longitudinal cutout extends from a rear edge of the thread protector toward the slotted head.

11. The apparatus of claim 10, wherein the longitudinal cut out ends before reaching the slotted head.

13. The apparatus of claim 1, wherein the at least one wing comprises two wings hingedly mounted to the central portion at hinged connections, and wherein forward facing portions of each of the wings extend forward from the hinge connections and are spaced from each other, and rearward facing portions of each of the wings extend rearwardly from the hinge connections.

14. The apparatus of claim 13, further comprising a slot extending along the central portion between the hinge connections.

15. The apparatus of claim 2, wherein the head portion has an axis and the central portion has a side wall substantially parallel to the axis, wherein the at least one wing is pivotable relative to the central portion between a compressed position wherein the at least one wing is substantially parallel to the side wall and an extended position wherein the at least one wing is angled away from the side wall, and wherein an outer wall of the at least one wing is aligned with an outer wall of the solid base when the at least one wing is in the compressed position.

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(ix) Evidence appendix - None.

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(x) Related proceedings appendix - None.